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PRECEPTS FOR THE PERFORMANCE STANDARDS AND SPECIAL REVIEW BOARDS

This circular transmits the Performance Standards and Special Review Board Precepts. Where this circular conflicts with the regulations contained in Volume III Foreign Affairs Manual, the circular will prevail.

The Performance Standards Boards will review the files of Foreign Service officers placed in the low seven percent of their class in accordance with Section E of the 1975 Selection Board Precepts (FAMC 702) and will identify any who, on the basis of documented performance, should be separated from the Service or denied the next periodic step-increase. Two Performance Standards Boards will convene on January 19, 1976: Board I will review low-ranked officers in Classes 1, 2, and 3; Board II low-ranked officers in Classes 4 and below. Any officers identified for separation or denial of step-increase will be informed promptly.

Officers who wish to challenge a determination of the Performance Standards Boards that they should be selected out under Section 633(b) of the Foreign Service Act of 1946 may appeal to a Special Review Board, which will be convened subsequently. This Board will review all the information on the performance of appellants considered by the Performance Standards Boards; afford the appellants a hearing, at which they may be represented by counsel and present witnesses, interrogatories, and any other relevant information; and decide whether to uphold or reverse the selection-out determinations of the Performance Standards Boards.

FAMC-708

- 2 -

Board recommendations for denial of setp-increase (Section 625 of the Act) will be processed in accordance with applicable Department of State regulations.

This circular will be canceled by codification in Volume 3, Foreign Affairs Manual. Meanwhile, cross-reference this circular to 3 FAM 732.3.

- 3 -

PRECEPTS

PERFORMANCE STANDARDS BOARD

TABLE OF CONTENTS

- A. Major Responsibilities
- B. Material Available to the Board
 - 1. General Information Relative to the Board's Duties
 - 2. Specific Information and Material Relative to the Performance of Officers Certified to the Board
 - 3. Personal Knowledge
 - 4. Prohibition on Obtaining Other Information
- C. Criteria for Decisions
 - 1. Legislative Authority and Its Implementation
 - 2. The Standard of Performance and its Application
 - 3. Potential as an Ingredient of Performance
 - 4. Recency and Consistency of Adverse Reports
 - 5. Mitigating or Extenuating Circumstances
 - 6. Officers Approaching Time-in-Class or Mandatory Retirement for Age
 - 7. Assessment of Candid Reports
 - 8. Inadmissible Factors
- D. Findings
- E. Subsequent Action
- F. Oath of Office

PRECEPTS FOR PERFORMANCE STANDARDS BOARD

A. Major Responsibilities

The Performance Standards Board will review the performance files and other material described in Section B below which relate to officers certified to it, in alphabetical order by class and function by the Director General in accordance with Selection Board Precepts and Special Directives. Following its study of this material, the Performance Standards Board shall:

1. Identify those officers who, in its judgment, have not met the standards of performance required of their class under Section 633(a)(2) of the Foreign Service Act of 1946, and therefore shall be involuntarily retired under Section 633(b) of the Act (selection-out). The Board will identify no officer for such retirement unless that officer's personnel file contains official documentation of performance covering at least two years of service while in present class.

The Board shall prepare a written justification based on the material properly before it, for each identification of an officer for involuntary retirement.

All citations of deficiencies and shortcomings in the officer's performance must be supported by specific reference to material properly before the Board. Officers so identified will be involuntarily retired in accordance with applicable regulations, unless they appeal the determination of the Performance Standards Board, within 30 days of receipt of written notification, to the Special

FAMC-708

- 5 -

Review Board and that Board does not sustain the determination of the Performance Standards Board.

2. Identify those officers for whom the Board recommends denial of the next scheduled periodic salary step increase because of failure in the most recent rating year to "meet the standards required for the efficient conduct of the work of the Service" under Section 625 of the Act. In each such case, a written justification similar to that described in sub-paragraph 1 shall be prepared.
3. Identify any officer whose conduct or unsatisfactory performance of duties warrants separation for cause under Section 637(a) of the Act, but on whom such action has not been initiated by authorities having primary responsibility to do so. In each such case, a written justification similar to that described in sub-paragraph 1 above shall be prepared. The performance files of officers who were not identified under sub-paragraphs 1, 2, or 3 above will be returned to the files without prejudice or annotation.

B. Material Available to the Board:

1. General Information Relative to the Board's Duties:
Each Board member will be provided with a briefing book which will contain: (a) a copy of these Precepts; (b) a copy of all relevant Selection Board Precepts; (c) a copy of those portions of the Foreign Service Act relating to selection-out and separation for cause; (d) a copy of the provisions of the Foreign Affairs Manual regarding performance evaluation and involuntary retirement; and (e) alphabetical lists by class and by function of all officers certified by the Director General for consideration by the Board. The Board will address

FAMC-708

- 6 -

questions regarding their work only to the Director, Office of Performance Evaluation.

2. Specific Information and Material Relative to the Performance of Officers Certified to the Board.

a. The officer's performance file which was the basis for the low ranking accorded the officer by the Selection Board. This file is maintained on each officer by the Director General of the Foreign Service in accordance with Sections 601 and 611 of the Foreign Service Act of 1946, as amended, and is available for examination by the officer on request. The performance file contains documents such as officer evaluation reports, inspectors' reports, end-user reports, awards, letters of commendation and reprimand, and other documents related to performance.

b. Files of evaluation reports written by individual officers on other employees. These files can be of use in assessing the officer's executive skills as a supervisor and fulfillment of the officer's duties as a rating officer.

c. Any other material which was available to the Selection Boards which low-ranked the officer under consideration.

d. The rankings of previous Selection Boards, and the findings or comments of previous Performance Standards Boards or Special Review Boards regarding the officer, while in present class, and the record of any action taken on them. Such rankings, findings, or comments will not be supplied if they have been negated by subsequent decisions of the Director General, Deputy Assistant Secretary for Personnel, or a grievance board regarding the

FAMC-708

- 7 -

inadmissibility or inaccuracy of material in the officer's personnel files. The Board is specifically enjoined not to draw assumptions or conclusions of any nature from the absence of such information regarding any portions of an officer's period of service in present class. The Board should note that the material described in this sub-paragraph is not supplied to Selection Boards and thus did not contribute to the low-ranking of officers certified to the Board.

3. Personal Knowledge

If a Board member brings additional information relevant to the performance of an officer under review to the attention of the Board, it shall be done by means of a signed memorandum. Such information shall cover only matters up to and including the employee's last rating period. A copy shall be forwarded promptly, by cable if necessary, to the individual so that there will be an opportunity to comment on it before a Board completes deliberations, but such completion will not be postponed for the receipt of any comment. A copy of the memorandum and the employee's comments, if any, will not be placed in the performance file, but will be made part of the Board's records.

4. Prohibition on Obtaining Other Information

Board members will not seek nor receive from any source any other information or briefing; for example, on the health, security, suitability, assignability, or reputation of any officer under consideration.

- 8 -

1. Legislative Authority and Its Implementation
Section 633 (a) (2) of the Foreign Service Act, as amended, provides that the Secretary of State shall prescribe regulations concerning the standard of performance which an officer must maintain to remain in the Service.

In implementation of Section 633(a) (2) of the Act, Foreign Service regulations have at various times prescribed differing formulations or instructions for determining whether an officer has met the standards required of that officer's class. In some years an officer was judged to have fallen short of that standard if ranked in a specified low percentile of the rank-order list by a specified number of selection boards while in present class. More recently, a single selection board was authorized to identify individual officers for further consideration for possible selection-out by a panel appointed for that purpose.

Current selection-out procedures combine elements of both the low percentile and the "identification" concepts. The files of officers ranked in a specified low percentile of their class by a selection board are certified by the Director General to the Performance Standards Board which will make an independent assessment of possible deficiencies of performance in each case. (NOTE: Certification will not occur if, within the calendar year in which the Board is scheduled to submit its findings, a low-ranked officer will reach mandatory retirement or will be retired with maximum time-in-grade. At the discretion of the Director General, a low-ranked officer will not be certified if the Deputy Assistant Secretary for Medical Services recommends against such certification on medical or compassionate grounds.)

As described in paragraph A above, the Performance Standards Board will with regard to each officer certified it either (1) determine that the officer should be selected out, (2) recommend the denial of a periodic salary

FAMC-708

- 9 -

step increase, (3) recommend separation for cause, or (4) take no action.

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If the performance Standards Board determines that selection-out is indicated, the officer has the right to appeal to a Special Review Board which will independently review the case. In the course of that review, the Special Review Board will conduct a hearing at which the officer may present any information not available to the Performance Standards Board, including evidence as to the truthfulness of statements made about the officer, and will be accorded full due process of law, including inter alia, the right to be represented by counsel, to request and examine witnesses, or submit interrogatories, and otherwise to present information relevant to the issues and the Board's deliberations. If the Performance Standards Board concludes that the overall record of an officer while in present class does not support a selection-out determination, but that an officer's performance in the most recent rating year has been so markedly deficient as to impede "the efficient conduct of the work of the Service" (Section 625 of the Act) it will recommend denial of the next periodic salary step increase. In accordance with paragraph B.2.d of the precepts, the justifying statement for such a recommendation, and the action taken upon it, will be provided to any future Performance Standards Board to which the officer may be certified while in present class.

The Board's authority to recommend initiation of separation for cause proceedings is conferred solely for use in those presumably rare instances in which material properly before the Board indicates such action is appropriate but has not been instituted. Such a recommendation will be made only in circumstances clearly more appropriate to consideration and processing under Section 637 than under under Section 633, and will not be made concurrently with a selection-out determination.

- 10 -

2. The Standard of Performance and Its Application

Officers certified to the Performance Standards Board have already been determined by the annual Selection Boards to rank within the bottom range of their respective classes. In making these determinations, Selection Boards are instructed to place in the lower ranges of each rank-order list those officers whose performance, when compared to that of their peers, reveals a relative deficiency in core skills or qualities of character and intellect important to the discharge or normally assigned duties. For an officer of Class 4 or below, an indicated lack of potential for exercising greater responsibility may also warrant a similarly low Selection Board ranking.

The Performance Standards Board may not pass judgement on the low ranking accorded an officer by a Selection Board. The Performance Standards Board's task is to conduct an independent study of the files of low-ranked officers and to determine in each case whether the officer's performance in present class justifies one of the actions described in paragraph A above. The Board is to ensure that each officer under consideration is treated with complete fairness.

Selection-out of an officer is appropriate only if in the Performance Standards Board concludes from its independent review that while in present class the officer has failed to maintain the standard required of officers of that class and is thereby of marginal value to the Service. However, a finding of unsatisfactory performance per se in a present or recent assignment is not required.

The wide variety of duties and responsibilities which the Foreign Service requires of officers of a given class, performing different functions under varying conditions in different parts of the world, precludes defining a class standard by a precise enumeration of specific job requirements, such as might be established for permanent incumbents of a particular position. The standards required of an entire class are therefore expressed in broad terms,

FAMC-708

- 11 -

such as are used in the annual precepts by which individual officers are rank-ordered on the basis of relative merit which provides a basis for promotion.

All Foreign Service officers should embody a balanced blend of integrity, good judgment and decisiveness, initiative, loyalty, intellect, creativity, capacity for growth, courage, sense of priority, appropriate attention to significant detail, ability to work with others, persistence in pursuit of sound objectives, willingness to accept responsibility, industry and productivity, honesty, dependability, self-reliance, adaptability, fairness including fair treatment of colleagues and subordinates, honor, dignity, core skill and functional competence, independence of thought, humane and considerate conduct, acceptance of Service discipline, and an ability to meet reasonable and clear goals. The foregoing list of positive qualities and attributes is not meant to be all-inclusive. While few can be expected to excel in all such qualities, a significant shortcoming in several of them, especially in certain combinations, should weigh heavily in the Board's determinations.

Viewed in its entirety, the officer's performance should reflect the standards required of the class generally and a willingness to develop the expertise needed in one's work. That expertise may vary according to class or function, and will normally be apparent from the description of duties and work requirements contained in each officer's recent performance evaluation reports.

Some of the qualities described above are more easily developed by an officer disposed to do so than are other such qualities. The Board should weigh this factor, as well as any evidence in the file that deficiencies noted by the Board had previously been brought to the officer's attention, in deciding whether to select out or to recommend a denial of a salary step increase.

- 12 -

Although the standards demanded of an entire class are of necessity defined in general and broad terms, the failure of any individual officer to measure up to those standards becomes evident in specific and readily apparent shortcomings.

The Board's decision to select out an officer must be predicated on an identification in its findings of specific deficiencies in qualities or skills which place the officer's performance below the overall standard expected from officers of such rank, and thus indicate that the officer would be of marginal utility in varied assignments for which the officer should otherwise presumably be qualified by rank, training, and experience.

3. Potential as an Ingredient of Performance

A lack of demonstrated capacity to assume greater responsibility is a relevant element in determining the marginal character of an officer.

In a junior officer a discernible lack of potential to perform effectively at higher grades may very well of itself establish that officer's unsuitability for continuing a Foreign Service career. Separation of such officers at an early stage may avoid the increased personal hardship and disappointment attendant on forced separation at a more advanced age and rank.

For middle-grade officers, the weight which capacity for growth should bear in an overall assessment of their value to the Service will tend to decline as age and rank increases. An officer of class three or above should be judged by the Board primarily on the officer's relative ability to perform in differing responsibilities to which that officer might reasonably be assigned at present grade.

F7MC-708

- 13 -

4. Recency and Consistency of Adverse Reports

The Board should base its decision solely on the record of the officer's tenure in present class. However, a review of earlier reports may help to establish whether recently noted deficiencies represent the continuation or reemergence of shortcomings brought to the officer's attention earlier in the officer's career.

5. Mitigating or Extenuating Circumstances

Medical or compassionate factors bearing on the performance of individual officers certified to the Board may in some instances be evident from the file. Such factors, where known, may be weighed by the Board in making its decisions. An officer designated for selection-out will have the opportunity to present information relating to such factors to the Special Review Board.

6. Officers Approaching Time-in-Class or Mandatory Retirement for Age

The time remaining before an officer will arrive at mandatory retirement for age or selection-out for time-in-class is not relevant to the Board's assessment of an officer. However, the Board will not receive the files of officers who will retire for age or maximum time-in-class within the calendar year in which the Board is scheduled to submit its findings.

7. Assessment of Candid Reports

The Department requires honest, candid, and constructive criticism in evaluation reports. No officer is perfect, and undue weight must not be given to single episodes or to the comments of only one rating or reviewing officer, particularly where a clear distinction exists between one officer's appraisal and that of other rating or reviewing officers. In cases where the Board suspects that an unfavorable evaluation or low rating is the result of a

- 14 -

personality clash or policy difference with the rating officer, it should seek additional insight by reviewing with particular care the file of evaluation reports prepared by the rating officer, which will be made available to the Board by the Office of Performance Evaluation, upon request.

8. Inadmissible Factors

a. It is the right of every employee to belong to and participate actively on behalf of employee organizations. However, the exercise or nonexercise of that right is not a permissible consideration in evaluating the employee's performance. Boards should ignore any comments in performance files regarding such membership or activity, or the absence thereof, and shall report in their findings and recommendation any indication that an employee has been disadvantaged by such factors.

b. Race, color, religion, sex, national origin, age, marital status or plans, retirement plans, method of entry into the Service, or reluctance to work voluntary overtime are factors that are not relevant to the evaluation of an officer's performance. Boards shall ignore comments on such factors and report in their findings and recommendations any indication that an officer has been affected because of the factors listed above. In such cases the individuals will be informed.

c. Mention of a physical handicap or medical problem, (including alcoholism or drug abuse) or efforts at rehabilitation are inadmissible except that reference may be made to the confirmed knowledge of such a condition to the extent that it affects job performance. Instances when the employee has not performed assigned duties in an efficient or safe manner, has not been dependable or has brought discredit on the Nation, the Department, or the Foreign Service through the employee's behavior may be documented.

FAMC-708

- 15 -

d. No mention may be made in performance reports of an officer's spouse or family. The Boards must ignore all such references, including comments on a spouse's representational or social activities.

e. References in performance evaluation reports to initiation of or participation in informal or formal grievance procedures or Equal Employment Opportunity complaints procedures, to prior Selection Board rankings or selection-out proceedings are not admissible. Boards are therefore instructed to ignore such statements in evaluation reports and return the entire file to the Director, Office of Performance Evaluation, for appropriate action.

D. Findings

At the conclusion of its work the Board shall submit its findings to the Director General, which are to consist of the following:

1. A list of officers designated for selection-out under the provisions of Section 633(a) (2) of the Foreign Service Act. To this list will be attached individual statements justifying the Board's decision in each case. These statements should carefully explain the basis for its determination by reference to specific examples and, where appropriate, quotations from performance documents in the officer's file. Direct reference may be made to relative rankings the officer has received from past Selection Boards, but the justification must be based primarily on performance as documented in the file. Where an officer has failed to profit from experience or past counseling, that failure should also be noted and documented. Each statement will be certified by the Board Chairperson as reflecting the conclusions of the Board and each page of each statement will be initialed by the Board Chairperson.

2. A list of officers whom the Board recommends be denied the next scheduled periodic salary step increase,

FAMC-708

- 16 -

under Section 625 of the Act. Attached to this list will be individual justifying statements similar to those described in sub-paragraph 1.

3. A list of any officers whose record appears to warrant separation for cause under Section 637(a) of the Act, but on whom such action has not been initiated. Attached to this list will be justifying statements similar to those described in sub-paragraph 1 above.

4. Any recommendations or comments which the Board may wish to submit to the Director General concerning any aspect of the Board's duties and responsibilities.

E. Subsequent Action

Following the receipt by the Director General of the Board's findings, the actions described below will take place:

1. Officers designated by the Performance Standards Board for selection-out will be so informed in writing. They will be supplied information pertinent to their involuntary retirement, to include a computation of benefits to which they are entitled under Section 634 of the Foreign Service Act, and a definite departure date from the Service. They will also be advised in writing of their rights to appeal within 30 days of the receipt of this information to a Special Review Board. Such appeal will defer the selection-out action against them pending that body's decision. They will be informed of their rights before that Board including that of a hearing at which the officer may be represented by counsel and may present relevant information.

In extraordinary circumstances the Director General may for compassionate or humanitarian reason withhold notification to an officer of selection-out, and instead

FAMC-703

- 17 -

present all facts and circumstances which have led to this decision to the Special Review Board for preliminary review. In such an instance, the Board may, in its discretion, quash, defer, or suspend the selection-out proceedings without notice to the officer. Should it elect not to do so, the selection-out action will resume, without prejudice should the officer subsequently appeal the decision of the Performance Standards Board to the Special Review Board. (In such event the officer will be informed of the Director General's presentation to the Special Review Board and of the latter's decision to let the case take its normal course.) In all such extraordinary instances, the exclusive employee representative organization will be advised promptly of the facts, circumstances, and Special Review Board decision, but without identification of the officer involved.

2. Officers recommended for denial of the next scheduled periodic salary step increase will promptly be informed of that fact. Such recommendations will further be considered and processed in accordance with applicable Department of State regulations.

3. Officers recommended for separation for cause under Section 637 of the Act will be informed of that fact. Such recommendations will be considered and processed in accordance with applicable Department of State regulations.

FAMC-708

- 18 -

F. Oath of Office

Before convening their duties all Board members will execute the following oath:

"I, _____, do solemnly swear (or affirm) that I will, without prejudice or partiality, perform faithfully and to the best of my ability the duties of a member of the Performance Standards Board; that I will preserve the confidential character of the personnel records used by the Board; that I will not reveal to any unauthorized person information concerning the deliberations findings, and recommendations of the Board. So help me God."

- 19 -

PRECEPTS

SPECIAL REVIEW BOARD

TABLE OF CONTENTS

- A. Membership
- B. Scope and Authority
- C. Considerations
- D. The Board Record
- E. Rights of the Officer Under Consideration by the Board
- F. Department of State Representation Before the Board
- G. Board Procedures
 - 1. Documentary Material
 - 2. Pre-Hearing Conference
 - 3. The Hearing
 - 4. Post-Hearing Argument
- H. Decision of the Board
- I. Extraordinary Authority in Compassionate Cases
- J. Board Recommendations to Director General
- K. Conclusion

- 20 -

PRECEPTS FOR THE SPECIAL REVIEW BOARD

A. Membership

The Special Review Board (hereafter called the Board) will consist of five members, three of whom will be Foreign Service officers, one an active duty member of another U. S. government agency, and one a public member. At the time of appointment one of the Foreign Service officer members will be designated as Chairperson.

To the extent practicable the three Foreign Service members will be selected to represent a broad cross-section of Foreign Service functional responsibilities. At least two of the three must be on active service and one may be retired, provided that termination of active service occurred no more than 18 months prior to initial appointment to the Board. If an officer under review by the Board so requests at the time of appeal, the Department will constitute the Board which considers his or her case so as to include at least one Foreign Service member who holds a rank no higher than two grades above the officer. The other U.S. government agency member may not have served at any time as a member of the Foreign Service (i.e., as an FSO, FSIO, FSR, FSRU, or FSS). The public member will be selected by the same criteria as govern the selection of public members for Selection Boards. (3 FAM 564.2b) No member of the Board shall have served on a Performance Standards Board which identified for possible selection-out an officer to be reviewed by the Board.

A procedural advisor from outside the Department of State, experienced in the conduct of hearings related to the disciplining or separation of employees, will advise the Chairperson and the Board regarding rulings and procedural actions within their competence, in order to assure due process and compliance with these precepts. All Board members and the procedural advisor will be appointed by the Director General after the Department of State has offered the exclusive employee representative the opportunity to comment within 15 working days on the potential appointees under consideration.

FAMC-708

- 21 -

The Chairperson and the procedural advisor may be appointed and sworn in advance of the other members of the Board for the purpose of conducting the pre-hearing conferences described below.

B. Scope and Authority

The Board will review the decision of the Performance Standards Board, in each case in which the officer affected has initiated a written appeal within 30 days of receipt of written notice of selection-out, and will affirm or disapprove the Performance Standards Board's decision on the basis of the considerations set forth in paragraph C below. If the Board after conducting its review, affirms the decision reached by the Performance Standards Board, the officer shall be separated under Section 633(a)(2) of the Foreign Service Act and will receive benefits in accordance with Section 634 of the Act. If the Board disapproves the decision of the Performance Standards Board, selection-out proceedings against the officer will thereby terminate, and the officer may continue in Service without prejudice.

C. Considerations

In determining whether to affirm or disapprove a finding of the Performance Standards Board, the Board will consider all evidence duly available to the Performance Standards Board and all additional evidence presented to the Board in accordance with these precepts. In reaching a decision on an officer the Board must consider and resolve two distinct issues:

- (1) Determine whether or not, in the light of all evidence before it, the officer's performance has fallen below the standard required of the officer's class. In interpreting and applying that standard, the Board will draw on criteria set forth in paragraph C ("Criteria for Decision") of the Performance Standards Board Precepts, which, in their substantive content, are hereby incorporated by reference into these Precepts.

The Special Review Board will sustain or reject findings solely on the basis of the Board's

- 22 -

independent assessment of all information properly before it. If the Board should conclude that the officer's performance has met the standard required of the officer's class, it will disapprove the Performance Standards Board's decision without concern for or reference to the factors cited in paragraph 2 below.

- (2) If the Board concludes that the officer's performance has failed to meet the standards required of the officer's class, it will then determine whether or not the total evidence before it provides sufficient extenuation or mitigation to justify a disapproval of the Performance Standards Board's decision and the consequent retention of the officer in the Service. Factors which may be pertinent to this determination include, but are not limited to, family and medical problems, personality or policy conflicts, misassignment, and clear evidence of the officer's desire and capability to correct deficiencies noted by the Performance Standards Board.

If the Board concludes that for reasons of this nature an officer whose performance has not met the required standard should nonetheless be retained, it shall disapprove the findings of the Performance Standards Board. If it determines that there has not been an adequate or convincing showing of such reasons for retention, it should approve the findings.

D. The Board Record

The complete record of the proceeding on which the Board will base its decision shall consist of the documentary material referred to in paragraph G(1) of these precepts; all correspondence received by the Board in the matter under consideration; a verbatim transcript of the hearing before the Board; all documentary evidence received in evidence at such hearing; post-hearing briefs, if any; and any additional material submitted by the officer.

E. Rights of the Officer Under Consideration by the Board

E. Rights of the Officer Under Consideration by the Board

An officer who has appealed a decision by the Performance Standards Board has the following rights:

1. A copy of the statement prepared by the Performance Standards Board in support of its decision regarding the officer, as required by paragraph D1 of the Performance Standards Board Precepts.
2. Pre-hearing access to all materials concerning the officer which were considered by the Performance Standards Board.
3. Representation before the Board by counsel obtained by the officer or by any other person who accepts the officer's request to represent the officer, provided, however, that the representative is eligible for, or has an appropriate security clearance, if classified material is to be considered. All references to "the officer" in these precepts is understood to include the officer's designated representative, unless otherwise stated.
4. An evidentiary hearing before the Board, at which the officer may present witnesses able and willing to appear in person, examine by interrogatories witnesses whose location at the time of the hearing renders personal appearance impractical, cross-examine adverse witnesses presented by the Department of State representative in accordance with paragraph F below, present any other evidence or material relevant to the Board's deliberations, and/or make oral presentations and arguments.
5. A reasonable amount of official time for the officer, and the officer's representative, if an employee of the Department, to prepare the presentation to the Board.
6. In the event the officer is not on duty in the Washington, D. C. metropolitan area, the officer (but not the officer's designated representative) will be provided travel orders and per diem allowance for temporary duty in Washington in

- 24 -

connection with the officer's hearing before the Board.

7. Access to the Department's communications for transmission of interrogatories and other messages essential to the preparation of an officer's case, including use of telegraphic facilities for such messages provided they are of reasonable number and length. The Chairperson may exclude from such references any comment not directly bearing upon matters before the Board.
8. A written decision of the Special Review Board setting forth its decision as to whether or not an officer will be involuntarily retired and the factors on which the Board has made its decision.

F. Department of State Representation Before the Board

The Department will be represented during Board proceedings by a Departmental representative for the purpose of ensuring as full a statement of pertinent facts as may be necessary for the Board's determination of the case, and ensuring that the Department's policies and procedures are accurately presented to the Board. The Department of State representative may call witnesses, present interrogatories, or otherwise present evidence only to rebut or clarify evidence presented by the officer or to substantiate material already before the Board which the officer has challenged. For the same purpose, the representative may cross-examine or present cross-interrogatories to individuals testifying at the request of the officer and may also present such additional evidence from Department sources as the Board may specifically request. The Department of State representative may be an attorney only if the officer is represented before the Board by an attorney.

G. Board Procedures

1. Documentary Material

Prior to its hearing the Board will be provided with the following material which will also be made available to the officer:

- 25 -

- a. All material relevant to the officer which was considered by the Performance Standards Board.
- b. Copies of the statement prepared by the Performance Standards Board in justification of its decision to select out the officer.

2. Pre-Hearing Conference

In each case before the Board, the Chairperson will conduct one or more pre-hearing conferences with the officer identified for involuntary retirement, the officer's representative and the Department representative. The purpose of the conferences will be to define and narrow the issues. These conferences, where possible, should establish the scope of material to be considered by the Board, the number and identity of witnesses, the timing and content of interrogatories, and should address any procedural matters which the Chairperson or either party wishes to raise prior to the commencement of the hearing.

At the first pre-hearing conference, the Department of State representative will present to the Chairperson all Documentary evidence described in paragraph G(1) above. The Chairperson will hold this material for study by the Board prior to the hearing and will also provide the officer access to any portions not already made available to the officer. At the first conference the Chairperson will also set a date by which the officer must submit:

- a. A list of any witnesses the officer wishes to have testify at the hearing.
- b. Written interrogatories which the officer desires the Chairperson to forward to individuals who appear unlikely to be able to appear in person.

These submissions must, in each instance, be accompanied by a brief resume of the evidence which the officer expects to adduce thereby.

- 26 -

At a subsequent conference, and on the basis of the resume, after hearing any objections posed by the Department of State representative, the Chairperson will rule on the relevance and materiality of the anticipated evidence. The Chairperson will approve or disapprove the request, in case of interrogatories approving or rejecting specific questions as appropriate. In the case of interrogatories, the Chairperson will grant the Department of State representative the opportunity to pose questions in cross-examination, which, however, may relate only to subject matters dealt with within the scope of the questions posed by the officer. The Chairperson will, after hearing any objections posed by the officer, rule on the relevance and materiality of the questions in cross-examination, and at the Chairperson's discretion may permit the officer to withdraw or modify previously posed questions in such a manner as to render the cross-examination questions unnecessary. The Chairperson may also at discretion grant the officer the right to pose a final sequence of re-direct questions relevant to matters dealt with in cross-examination. The Chairperson will then provide each interrogatory to the person to whom it is directed with the request that the answers be sworn before a United States Consular officer, or, if within the United States, a duly authorized Notary Public.

The Chairperson will set the date, time, and place for the hearing after consultation with both parties, and with regard for the anticipated time necessary for receipt of outstanding interrogatories. If, at any time prior to the hearing, either party requests a delay in the hearing date, the Chairperson has the authority to grant or refuse such a delay, subject to review by the full Board when the hearing convenes.

If requested by the Officer, the Chairperson will advise each witness, whose appearance before the Board has been approved, of the date and time of the hearing, and in the name of the Board, request their appearance. Should any such

- 27 -

prospective witness indicate an inability to appear in person, but a willingness to testify by interrogatory, the Chairperson will allow the requesting party sufficient time to present a written interrogatory in accordance with the procedure outlined, above, delaying, if necessary, the scheduled hearing date.

3. The Hearing

A hearing will be held in each case unless specifically waived by the officer in writing. Prior to the hearing the Board will familiarize itself with all documentary evidence which was considered by the Performance Standards Board. The purpose of the hearing is to receive such further evidence as the officer may wish to present, and to allow the Department of State (through the Department representative) to produce rebuttal evidence to that presented by the officer, should it so elect.

The hearing will be closed to all persons who are not direct participants, or whose presence has not been requested by the officer. No person shall be permitted to attend the hearing when classified material is presented or discussed unless that person possesses the appropriate security clearance.

At no time may the hearing be conducted in the absence of any member, unless the officer so agrees.

The entire hearing proceedings will be transcribed verbatim. The correctness of the transcript will be attested by the Chairperson, after consultation with both parties, and will be supplied to the full Board for review prior to rendering its decision.

All witnesses will be sworn by an individual authorized to administer oaths. All anticipated witnesses may be sworn simultaneously at the commencement of the hearing.

- 28 -

Prior to accepting evidence, the Board will hear any objections posed by the officer to pre-hearing rulings of the Chairperson, and will sustain or reject such rulings by a majority vote (the Chairperson voting along with other members.) In the course of the hearing, the Chairperson will rule on any questions of procedure or of the admissibility of evidence which arise, subject to reversal by a majority of the entire Board.

After the Board has acted on any appeals from the officer to the pre-hearing rulings of the Chairperson, the officer may call witnesses previously approved by the Chairperson and provide evidence within the bounds of relevancy and materiality. During this process, the officer will read into the record the response to interrogatories submitted on the officer's behalf by the Chairperson to witnesses unable to be present. The officer may elect not to present to the Board specific interrogatories already obtained, but, if presented, they must be presented in their totality and without abridgement or deletion. The officer may also call additional witnesses or request additional interrogatories not previously approved by the Chairperson, for good cause and with the approval of the Board. In such event, a recess in the hearing will be granted by the Chairperson, if necessary.

The Department of State will endeavor to assure the appearance as a witness or the completion of an interrogatory (on official time) by any U.S. Government employee whose testimony has been requested by the Chairperson. However, the Department of State has no legal authority to compel the appearance or the response to interrogatories of persons not presently in its own employ. The Department of State representative may cross-examine witnesses called by the officer, limiting questions to material raised on direct examination, for the purpose of rebutting or clarifying evidence presented by the officer. The officer may thereafter conduct a re-direct examination of the witness. After the officer has

- 29 -

completed presentation of evidence, the Department of State representative may call witnesses, present interrogatories previously approved by the Chairperson, or provide evidence, but only for the purpose of rebutting or clarifying evidence presented by the officer. The officer has the same rights of cross-examination regarding witnesses presented by the Department of State as described above.

Members of the Board may address questions to witnesses appearing before them, but must limit such questions to material within the scope already raised on direct or cross-examination.

The Chairperson may on initiative, or on the objection of either party, exclude testimony (either by interrogatory or in person) or evidence which the Chairperson deems immaterial or irrelevant to the deliberations and decisions of the Board. The Board may reverse such rulings by majority vote if it so elects. Except on matters of materiality and relevance, strict rules of evidence will not apply. However, the Board may exclude evidence where it would be unduly cumulative or repetitious.

Decisions of a Foreign Service Grievance Board will be recognized by the Board as a definitive adjudication of the issues and contentions addressed in such decision. Neither party may reargue such issues and contentions before the Board. The officer may present the text of Grievance Board decisions to the Board. The Department of State representative may do so only to establish that a specific contention or issue raised by the officer has already been adjudicated.

4. Post-Hearing Argument

On conclusion of the hearings, the Chairperson will ask the officer if the officer wishes to submit a post-hearing brief, present oral concluding arguments, or both. If the officer avails of either or both, the same privilege will be extended

- 30 -

to the Department of State representative. The Chairperson will then set a date and time for such presentations, subject to an appeal by the officer to the entire Board should the officer feel that the time provided for preparation or argument is inadequate.

H. Decision of the Board

Prior to rendering its decision, the Board will review all information before it, including the transcribed record of the hearing.

The Board is authorized to render only the following decisions: (a) to affirm the decision of the Performance Standards Board that the officer be involuntarily retired under Section 632(a)(2) of the Act; or (b) that the officer not be so retired. The Board will reach its decision by a majority vote. Any member not concurring may record reasons in a dissenting opinion to accompany the Board's decision. The Board will submit its decisions in writing to the Director General with a copy to the officer. The decision will state in detail the basis for its determination under paragraph (c)(1) of these Precepts and will indicate any factors it deemed relevant under paragraph C(2). The decision may also include recommendations concerning the ongoing assignment of an officer whom the Board has determined should not be retired.

Within 10 working days following issuance of the Board's decision, the officer may file with the Chairperson a request for reconsideration, citing specific errors of fact, or interpretation of fact which the officer perceives in the Board's findings. The Chairperson will rule on such requests promptly, with or without a statement of reasons for the Chairperson's action. If the Chairperson grants such a request, the Board will be reconvened to conduct the reconsideration, and the Director General will be advised of that fact. In the course of a reconsideration, the Board at its option may reopen the hearing to receive any further evidence it considers pertinent to such reconsideration. At the conclusion of a reconsideration, the Board will

- 31 -

affirm or reverse its prior findings, but need issue a new statement of decision only in the event of reversal.

A Board decision affirming the finding of the Performance Standards Board becomes binding and final either (1) on the expiration of 10 working days following its issuance if no written request for reconsideration has been filed, (2) upon denial of such a request, or (3) upon affirmation by the Board of its initial decision. Such a decision constitutes final administrative action of the Department of State, and will be implemented by the Director General in accordance with applicable regulations.

I. Extraordinary Authority in Compassionate Cases

Notwithstanding the procedures outlined above, the Board may receive and act on a recommendation of the Director General, submitted under paragraph E(1) of the Performance Standards Board Precepts, that for compassionate or humanitarian reasons a particular officer not be informed of the selection-out decision of the Performance Standards Board. In such an instance the Board may in its discretion and without notice to the officer, quash the selection-out proceedings, or suspend or defer them for a specified period, or until such time as the Director General may direct their resumption. Should the Board elect not to take any such action, the selection-out proceedings will resume, without prejudice, should the officer subsequently appeal the decision of the Performance Standards Board to the Special Review Board. (In such event, the officer will be informed of the Director General's presentation to the Special Review Board and of the latter's decision to let the case take a normal course.) In all such extraordinary instances, the exclusive employee representative will be advised promptly of the facts, circumstances, and Special Review Board decisions, but without identification of the officer involved.

J. Board Recommendations to Director General

Upon disposition of all cases which have been appealed to it, the Board may at its option address to the

- 32 -

Director General recommendations covering any aspect of Foreign Service procedures and practices which its deliberations have led it to believe warrant comment.